



INSURANCE ASSOCIATION OF CONNECTICUT

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Statement of
The Insurance Association of Connecticut
Insurance and Real Estate Committee

March 15, 2016

HB 5523, An Act Concerning Insurance Requirements for Transportation Network
Companies

I am Eric George, President of the Insurance Association of Connecticut ("IAC"). The IAC supports HB 5523, Act Concerning Insurance Requirements for Transportation Network Companies, and believes that appropriate insurance regulations are warranted and necessary in this emerging industry.

On a national level, the auto insurance industry and Uber and other market participants have reached an agreement on what the insurance rules and regulations should be for transportation network companies ("TNC's"). This agreement is embodied in the model legislation ("NCOIL Model TNC Act") adopted by the National Conference of Insurance Legislators ("NCOIL").

As stated later in this testimony, the IAC strongly feels that to best protect consumers this committee should incorporate the language included in the NCOIL Model TNC Act, a copy of which is attached hereto.

The use of smart phone app-enabled ridesharing transportation services provided by TNC's has increased significantly in recent years. The IAC is supportive of the innovation embodied in this new form of transportation. The IAC also strongly believes that consumers must be protected to the fullest extent possible as this industry and new transportation service grows and expands.

Most notably, we must ensure that the passenger, the driver and everyone else involved (directly or indirectly) get the benefit of proper and comprehensive insurance coverage. Personal automobile insurance policies simply cannot cover these situations, which absolutely would be considered "commercial activities". The NCOIL Model TNC Act addresses this.

Reliance on personal automobile insurance coverage with an overlay of additional commercial coverage would necessarily produce a gap in coverage that will be to the detriment of the passenger, the driver and everyone else involved (directly or indirectly).

The reason this gap would occur under such a scenario in coverage is that since the driver is engaging in a commercial activity, the typical livery exclusions that are standard in personal automobile insurance policies would necessarily exclude coverage for any losses occurred during that period. Put simply, it should be the obligation of the TNC or the TNC driver (or a combination thereof) to maintain primary automobile insurance coverage for all periods when commercial activity is taking place. The only way that can happen is if a primary automobile insurance policy is in place from the moment the app is activated through the

deactivation of the app. This is commonly known as "app-on to app-off". The NCOIL Model TNC Act addresses this.

Ensuring that primary automobile insurance is in place from app-on to app-off will cover all periods of commercial activity, and provide clarity that will help avoid coverage disputes and potential litigation, which would be unnecessary, costly and harmful. The NCOIL Model TNC Act addresses this.

Ultimately, the insurance provisions that must be included in any TNC\ridesharing legislation (including HB 5523) must provide support for innovation, protect insurance product certainty, define TNC activity and TNC insurance requirements and provide clarity and avoid disputes. The NCOIL Model TNC Act addresses this.

This new form of transportation is both exciting and innovative. The IAC fully supports the development of this industry, and believes that by requiring primary automobile insurance coverage all parties (most notably consumers) will benefit from the proper and appropriate protections.

Thank you for the opportunity to present IAC's viewpoint.

1 **NATIONAL CONFERENCE OF INSURANCE LEGISLATORS (NCOIL)**

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3 **Model Act to Regulate Insurance Requirements for**
4 **Transportation Network Companies and Transportation Network Drivers**

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6 *Adopted by the NCOIL Executive Committee on July 19, 2015. Sponsored by Rep. Michael Stinziano (OH)*
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8 **A. Definitions**

- 9 1. "Personal Vehicle" means a vehicle that is:
- 10 a. used by a TNC driver to provide a prearranged ride;
- 11 b. owned, leased or otherwise authorized for use by the Transportation
- 12 Network Company Driver; and
- 13 c. not a taxicab, limousine, or other hire vehicle
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- 15 2. "Digital Network" means any online-enabled application, software, website or system
- 16 offered or utilized by a Transportation Network Company that enables the
- 17 prearrangement of rides with Transportation Network Company Drivers.
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- 19 3. "Transportation Network Company" means a corporation, partnership, sole
- 20 proprietorship, or other entity that is licensed pursuant to this [Chapter/Title] and
- 21 operating in [STATE] that uses a Digital Network to connect Transportation Network
- 22 Company Riders to Transportation Network Company Drivers who provide
- 23 Prearranged Rides. A Transportation Network Company shall not be deemed to
- 24 control, direct or manage the Personal Vehicles or Transportation Network Company
- 25 Drivers that connect to its Digital Network, except where agreed to by written
- 26 contract.
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- 28 4. "Transportation Network Company (TNC) Driver" or "driver" means an individual who:
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- 30 a. receives connections to potential riders and related services from a
- 31 Transportation Network Company in exchange for payment of a fee to the
- 32 Transportation Network Company; and
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- 34 b. uses a Personal Vehicle to offer or provide a Prearranged Ride to TNC riders
- 35 upon connection through a Digital Network controlled by a Transportation
- 36 Network Company and in exchange for compensation or payment of a fee
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- 38 5. "Transportation Network Company (TNC) Rider" or "rider" means an individual or
- 39 persons who use a Transportation Network Company's Digital Network to connect
- 40 with a Transportation Network Driver who provides Prearranged Rides to the rider in
- 41 the driver's Personal Vehicle between points chosen by the rider.
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- 44 6. "Prearranged Ride" means the provision of transportation by a TNC driver to a
45 TNC rider:
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47 a. beginning when a TNC driver accepts a TNC rider's request for a ride through
48 a digital network controlled by a Transportation Network Company;
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50 b. continuing while the TNC driver transports the requesting TNC rider; and
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52 c. ending when the last requesting TNC rider departs from the Personal
53 Vehicle
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55 7. The term "prearranged ride" does not include transportation provided through
56 any of the following [CITE DEFINITION IN STATE LAW OR MOTOR CARRIER ACT]:
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58 a. shared expense carpool or vanpool arrangements
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60 b. use of a taxicab, limousine, or other hire vehicle
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62 c. a regional transportation
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65 **B. Transportation Network Companies**

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67 1. A transportation network company may not operate without a permit issued under
68 [CITE DEFINITION IN STATE LAW].
69 a. A permit is valid for one (1) year after the date of issuance.
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71 2. A TNC or a TNC driver is not:
72 a. a common carrier;
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74 b. a contract carrier; or
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76 c. a motor carrier
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78 3. The department shall issue a permit to a TNC that satisfies the following requirements:
79 a. establishes a zero tolerance policy for drug and alcohol
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81 b. requires compliance with applicable vehicle requirements
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83 c. adopts nondiscrimination and accessibility policies
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85 d. establishes record maintenance guidelines
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87 4. Before a TNC allows an individual to act as a TNC driver on the TNC's digital network, the
88 TNC shall:
89 a. require the individual to submit to the TNC an application that includes:
90 i. the individual's name, address, and age;
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92 ii. the individual's driver's license;
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94 iii. the registration for the personal vehicle that the individual will use to
95 provide prearranged rides;
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97 iv. proof of financial responsibility for the personal vehicle described in
98 4(a)(iii) above of a type and in the amounts required by the TNC; and

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- v. any other information required by the TNC;
 - b. with respect to the individual, conduct, or contract with a third party to conduct:
 - i. a local and national criminal background check; and
 - ii. a search of the national sex offender registry; and
 - iii. obtain a copy of the individual's driving record maintained under [CITE DEFINITION IN STATE LAW]
 - c. A TNC may not knowingly allow to act as a TNC driver on the TNC's digital network an individual:
 - i. who has received judgments for:
 - (1) more than three (3) moving traffic violations in the preceding three (3) years; or
 - (2) at least one (1) violation involving reckless driving or driving on a suspended or revoked license in the preceding three (3) years; or
 - ii. who has been convicted in the preceding seven (7) years of a:
 - (1) felony; or
 - (2) misdemeanor involving:
 - (a) resisting law enforcement;
 - (b) dishonesty;
 - (c) injury to a person;
 - (d) operating while intoxicated;
 - (e) operating a vehicle in a manner that endangers a person;
 - (f) operating a vehicle with a suspended or revoked license; or
 - (g) damage to the property of another person; or
 - iii. who is a match in the state or national sex offender registry;
 - iv. who is unable to provide information required under subsection (b)
5. A TNC shall establish and enforce a zero tolerance policy for drug and alcohol use by TNC drivers during any period when a TNC driver is engaged in, or is logged into the TNC's digital network but is not engaged in, a prearranged ride. The policy must include provisions for:
- a. investigations of alleged policy violations; and
 - b. suspensions of TNC drivers under investigation
6. A TNC must require that a personal vehicle used to provide prearranged rides must comply with all applicable laws and regulations concerning vehicle equipment.

C. Financial Responsibility of Transportation Network Companies

On or before [MONTH, DAY, YEAR] and thereafter, a Transportation Network Company Driver or Transportation Network Company on the driver's behalf shall maintain primary automobile insurance that:

1. Recognizes that the driver is a Transportation Network Company Driver or otherwise uses a vehicle to transport riders for compensation and covers the driver:
 - a. while the driver is logged on to the Transportation Network Company's Digital Network; or
 - b. while the driver is engaged in a Prearranged Ride
2. The following automobile insurance requirements shall apply while a participating Transportation Network Company Driver is logged on to the Transportation Network Company's Digital Network and is available to receive transportation requests but is not engaged in a Prearranged Ride:
 - a. Primary automobile liability insurance in the amount of at least \$50,000 for death and bodily injury per person, \$100,000 for death and bodily injury per incident, and \$25,000 for property damage.
[Drafting note: Reference by statute all other state mandated coverages for motor vehicles by state financial responsibility law, UM/ UIM, Med Pay, NF and/or PIP.]
 - b. The coverage requirements of this subsection 2 may be satisfied by any of the following:
 - i. automobile insurance maintained by the Transportation Network Company Driver; or
 - ii. automobile insurance maintained by the Transportation Network Company; or
 - iii. any combination of subparagraphs (i) and (ii).
3. The following automobile insurance requirements shall apply while a Transportation Network Company Driver is engaged in a Prearranged Ride:
 - a. Primary automobile liability insurance that provides at least \$1,000,000 for death, bodily injury and property damage;
[Drafting note: Reference by statute all other state mandated coverages for limousines, e.g., UM/ UIM, Med Pay, NF and/or PIP.]
 - b. The coverage requirements of this subsection 3 may be satisfied by any of the following:
 - i. automobile insurance maintained by the Transportation Network Company Driver; or
 - ii. automobile insurance maintained by the Transportation Network Company; or
 - iii. any combination of subparagraphs (i) and (ii)

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4. If insurance maintained by driver in subsections 2 or 3 has lapsed or does not provide the required coverage, insurance maintained by a Transportation Network Company shall provide the coverage required by Section C beginning with the first dollar of a claim and have the duty to defend such claim.
 5. Coverage under an automobile insurance policy maintained by the Transportation Network Company shall not be dependent on a personal automobile insurer first denying a claim nor shall a personal automobile insurance policy be required to first deny a claim.
 6. Insurance required by this Section C may be placed with an insurer licensed under [CITE STATUTE], or with a surplus lines insurer eligible under [CITE STATUTE] that has a credit rating of no less than "A-" from A.M. Best or "A" from Demotech or similar rating from another rating agency recognized by the department of insurance.
 7. Insurance satisfying the requirements of this Section C shall be deemed to satisfy the financial responsibility requirement for a motor vehicle under [STATE FINANCIAL RESPONSIBILITY STATUTE].
 8. A Transportation Network Company Driver shall carry proof of coverage satisfying sections C.2 and C.3 with him or her at all times during his or her use of a vehicle in connection with a Transportation Network Company's Digital Network. In the event of an accident, a Transportation Network Company Driver shall provide this insurance coverage information to the directly interested parties, automobile insurers and investigating police officers, upon request pursuant to [INSERT ELECTRONIC ID CARD LAW OR CREATE SUCH LAW]. Upon such request, a Transportation Network Company Driver shall also disclose to directly interested parties, automobile insurers, and investigating police officers, whether he or she was logged on to the Transportation Network Company's Digital Network or on a Prearranged Ride at the time of an accident.

229 **D. Disclosures**

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1. The Transportation Network Company shall disclose in writing to Transportation Network Company Drivers the following before they are allowed to accept a request for a Prearranged Ride on the Transportation Network Company's Digital Network:
 - a. the insurance coverage, including the types of coverage and the limits for each coverage, that the Transportation Network Company provides while the Transportation Network Company Driver uses a Personal Vehicle in connection with a Transportation Network Company's Digital Network; and
 - b. that the Transportation Network Company Driver's own automobile insurance policy might not provide any coverage while the driver is logged on to the Transportation Network Company's Digital Network and is

240 available to receive transportation requests or is engaged in a Prearranged
241 Ride, depending on its terms.

242 *[Drafting note: A state should consider appropriate lienholder language to*
243 *coordinate with the state's existing law.]*
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247 **E. Automobile Insurance Provisions**

- 248 1. Insurers that write automobile insurance in [INSERT STATE] may exclude any and all
249 coverage afforded under the policy issued to an owner or operator of a Personal
250 Vehicle for any loss or injury that occurs while a Driver is logged on to a
251 Transportation Network Company's Digital Network or while a Driver provides a
252 Prearranged Ride. This right to exclude all coverage may apply to any coverage
253 included in an automobile insurance policy including, but not limited to:
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- 255 a. liability coverage for bodily injury and property damage;
256 b. personal injury protection coverage as defined in [CITE STATUTE];
257 c. uninsured and underinsured motorist coverage;
258 d. medical payments coverage;
259 e. comprehensive physical damage coverage; and
260 f. collision physical damage coverage

261 Such exclusions shall apply notwithstanding any requirement under [STATE
262 FINANCIAL RESPONSIBILITY STATUTE]. Nothing in this section implies or requires that
263 a personal automobile insurance policy provide coverage while the driver is logged
264 on to the Transportation Network Company's Digital Network, while the driver is
265 engaged in a Prearranged Ride or while the driver otherwise uses a vehicle to
266 transport riders for compensation.
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268 Nothing in this Article shall be construed as to require an insurer to use any
269 particular policy language or reference to this section in order to exclude any and all
270 coverage for any loss or injury that occurs while a driver is logged on to a
271 Transportation Network Company's Digital Network or while a Driver provides a
272 Prearranged Ride.
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274 Nothing shall be deemed to preclude an insurer from providing primary or excess
275 coverage for the Transportation Network Company Driver's vehicle, if it so chose to
276 do so by contract or endorsement.
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- 278 2. Automobile insurers that exclude the coverage described in Section C shall have no
279 duty to defend or indemnify any claim expressly excluded thereunder. Nothing in
280 this Article shall be deemed to invalidate or limit an exclusion contained in a policy
281 including any policy in use or approved for use in [STATE] prior to the enactment of
282 this Article that excludes coverage for vehicles used to carry persons or property
283 for a charge or available for hire by the public.
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An automobile insurer that defends or indemnifies a claim against a driver that is excluded under the terms of its policy, shall have a right of contribution against other insurers that provide automobile insurance to the same driver in satisfaction of the coverage requirements of Section C at the time of loss.

3. In a claims coverage investigation, Transportation Network Companies shall immediately provide upon request by directly involved parties or any insurer of the Transportation Network Company Driver if applicable, the precise times that a Transportation Network Company Driver logged on and off of the Transportation Network Company's Digital Network in the twelve-hour period immediately preceding and in the twelve-hour period immediately following the accident. Insurers potentially providing coverage as set forth in Section C shall disclose upon request by any other such insurer involved in the particular claim, the applicable coverages, exclusions and limits provided under any automobile insurance maintained in order to satisfy the requirements of Section C.